IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13001 of 2003

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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A K YADAV - Petitioner(s)
Versus
DIRECTOR - Respondent(s)

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Appearance :
MS SUDHA R GANGWAR for Petitioner(s) : 1,
MR KALPESH N SHASTRI for Respondent(s) : 1,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 03/11/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

The petitioner has challenged in this petition the impugned order dated 10.12.2002 passed by the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad (for short “Tribunal”) in OA No. 739 of 1999, whereby the learned Tribunal rejected the Application filed by the petitioner challenging the impugned order of compulsory retirement from service.

On attaining the age of 50 years on 30.12.1998 the case of the petitioner was considered by the respondent – Authority and by impugned order dated 14.7.1999 (Annexure : E) he was compulsory retired from service in “public interest”. This was challenged by the petitioner before the learned Tribunal by way of OA which was dismissed by the learned Tribunal by its impugned Judgment and order dated 10.12.2002 (Annexure : A), which is challenged in this petition under Article 226 & 227 of the Constitution.

It was vehemently submitted by the learned Counsel for the petitioner that in the past he was promoted twice. Lastly, he was promoted in October, 1990, therefore, his services could not have been terminated by passing the impugned order of compulsory retirement in 1999. She also submitted that neither the petitioner acted against the interest of Nation nor he was found incompetent. Therefore, in the name of “public interest” he could not have been compulsory retired from service on attaining the age of 50. It is true that lastly he was promoted in October, 1990. However, on the promotional post his annual remarks for the

subsequent years of 1991, 1994, 1995, 1997 and 1998 were adverse. Though the same were communicated to him, he did not even bother to challenge the same or made any representation against it. Thus, it had become final. Considering this, if the Authority has passed the impugned order then judicial review of it is not permissible as the decision of the Authority to compulsory retire a person is a subjective satisfaction. The Court can not sit in Appeal over such decision. It can review or consider the decision of compulsory retirement only on three grounds, viz. (i) malafide, (ii) arbitrariness, and (iii) perversity. None of this was present in this case.

Under the circumstances when the learned Tribunal, having carefully gone through the entire record of the case, thought it fit not to entertain the application of the petitioner and rejected the same then certainly this Court in its limited jurisdiction under Article 227 of the Constitution would not like to interfere with such orders. Though the petition is labelled both, under Article 226 and 227 of the Constitution, strictly speaking, it is a petition under Article 227 of the Constitution, the scope of which is very narrow and limited as held by the Hon'ble Supreme Court in number of decisions that the High Court can not even correct the error committed by the Tribunal on facts or law. In fact there is no such error committed by the learned Tribunal while rejecting the application. In absence of any jurisdictional error committed by the Tribunal this Court can not interfere with such order passed

by the learned Tribunal, which is just and proper.

In view of the above, this petition fails and is hereby dismissed. Rule discharged. No order as to costs.

(B.J.SHETHNA,J.)

(M. D. SHAH, J.)

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